



*Montana Fish,  
Wildlife & Parks*

## STATE OF MONTANA REQUEST FOR PROPOSAL (RFP)

RFP Number: 130021	RFP Title: Fish & Wildlife Consultant for Energy Development in Montana		
RFP Response Due Date and Time: <u>September 7, 2012</u> 2:00 p.m., Mountain Time		Number of Pages: 29	Issue Date: August 6, 2012

### ISSUING AGENCY INFORMATION

Procurement Officer: Kari Shinn	Phone: (406) 495-3249 Fax: (406) 495-3253 TTY Users, Dial 711  Website: <a href="http://vendor.mt.gov/">http://vendor.mt.gov/</a>
Montana Fish, Wildlife & Parks 930 Custer Ave. West (Delivered) PO Box 200701 (Mailed) Helena, MT 59620-0701	

### INSTRUCTIONS TO OFFERORS

Return Sealed Proposal to:  Montana Fish, Wildlife & Parks Kari Shinn, Purchasing 930 Custer Ave. West (Delivered) PO Box 200701 (Mailed) Helena, MT 59620-0701	Mark Face of Envelope/Package with:  RFP Number: <u>130021</u> RFP Response Due Date: <u>September 7, 2012</u>
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Special Instructions:

### OFFERORS MUST COMPLETE THE FOLLOWING

Offeror Name/Address:	_____ (Name/Title)  _____ (Signature)  Print name and title and sign in ink. By submitting a response to this RFP, Offeror acknowledges it understands and will comply with the RFP specifications and requirements.
Federal Tax ID# _____	
Type of Entity (e.g., corporation, LLC, etc.)	Offeror Phone Number:
Offeror E-mail Address:	Offeror FAX Number:

**OFFERORS MUST RETURN THIS COVER SHEET WITH RFP RESPONSE**

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## INSTRUCTIONS TO OFFERORS

### It is the responsibility of each Offeror to:

**Follow the format required in the RFP** when preparing your response. Provide responses in a clear and concise manner.

**Provide complete answers/descriptions.** Read and answer **all** questions and requirements. Proposals are evaluated based **solely** on the information and materials provided in your written response.

**Use any forms provided**, e.g., cover page, budget form, certification forms, etc.

**Submit your response on time.** Note all the dates and times listed in the Schedule of Events and within the document. Late proposals are **never** accepted.

**The following items MUST be included in the response.**  
**Failure to include ANY of these items may result in a nonresponsive determination.**

- ☒ **Signed Cover Sheet**
- ☒ **Signed Addenda (if appropriate) in accordance with Section 1.4.3**
- ☒ **Address the mandatory requirement in accordance with Section 1.5.3**
- ☒ **Correctly executed State of Montana "Affidavit for Trade Secret Confidentiality" form, if claiming information to be confidential or proprietary in accordance with Section 2.3.1.**
- ☒ **In addition to a detailed response to all requirements within Sections 3, 4, and 5, Offeror must acknowledge that it has read, understands, and will comply with each section/subsection listed below by initialing the line to the left of each. If Offeror cannot meet a particular requirement, provide a detailed explanation next to that requirement.**

_____	Section 1, Introduction and Instructions
_____	Section 2, RFP Standard Information
_____	Section 3, Scope of Services
_____	Section 4, Offeror Qualifications
_____	Section 5, Cost Proposal
_____	Section 6, Evaluation Process
_____	Appendix A, Standard Terms and Conditions
_____	Appendix B, Contract

## SCHEDULE OF EVENTS

### EVENT

### DATE

RFP Issue Date.....	August 6, 2012
Deadline for Receipt of Written Questions .....	August 15, 2012
Deadline for Posting Written Responses to the State's Website ....	August 24, 2012
RFP Response Due Date .....	September 7, 2012
Notification of Offeror Interviews .....	September 21, 2012*
Offeror Interviews .....	Week of October 1, 2012*
Intended Date for Contract Award .....	October 12, 2012*

\*The dates above identified by an asterisk are included for planning purposes. These dates are subject to change.

## SECTION 1: INTRODUCTION AND INSTRUCTIONS

### **1.1 INTRODUCTION**

The STATE OF MONTANA, Department of Fish, Wildlife & Parks ("State") is seeking a contractor to provide professional planning services in compiling a set of Fish & Wildlife Recommendations for Energy Development in Montana. A more complete description of the services to be provided is found in Section 3.

### **1.2 CONTRACT PERIOD**

The contract period is 12 months, beginning November 1, 2012, and ending October 31, 2013, inclusive. The parties may mutually agree to a renewal of this contract in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of three years, at the State's option.

### **1.3 SINGLE POINT OF CONTACT**

From the date this Request for Proposal (RFP) is issued until an Offeror is selected and announced by the procurement officer, **Offerors shall not communicate with any state staff regarding this procurement, except at the direction of Kari Shinn**, the procurement officer in charge of the solicitation. Any unauthorized contact may disqualify the Offeror from further consideration. Contact information for the single point of contact is:

Procurement Officer: Kari Shinn  
Address: 930 Custer Avenue West, Helena, MT 59601  
Telephone Number: 406-495-3249  
Fax Number: 406-495-3253  
E-mail Address: kshinn@mt.gov

### **1.4 REQUIRED REVIEW**

**1.4.1 Review RFP.** Offerors shall carefully review the entire RFP. Offerors shall promptly notify the procurement officer identified above via e-mail or in writing of any ambiguity, inconsistency, unduly restrictive specifications, or error which they discover. In this notice, the Offeror shall include any terms or requirements within the RFP that preclude the offeror from responding or add unnecessary cost. Offerors shall provide an explanation with suggested modifications. The notice must be received by the deadline for receipt of inquiries set forth below. The State will determine any changes to the RFP.

**1.4.2 Form of Questions.** Offerors having questions or requiring clarification or interpretation of any section within this RFP must address these issues via e-mail or in writing to the procurement officer listed above on or before **August 15, 2012 at 5:00 p.m.** Each question must provide clear reference to the section, page, and item in question must be included in the form. Questions received after the deadline may not be considered.

**1.4.3 State's Response.** The State will provide a written response **August 24, 2012** to all questions received by **August 15, 2012**. The State's response will be by written addendum and will be posted on the State's website with the RFP at <http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx> by the close of business on the date listed. Any other form of interpretation, correction, or change to this RFP will not be binding upon the State. **Offerors shall sign and return with their RFP response an Acknowledgment of Addendum for any addendum issued.**

## **1.5 GENERAL REQUIREMENTS**

**1.5.1 Acceptance of Standard Terms and Conditions/Contract.** *By submitting a response to this RFP, Offeror accepts the standard terms and conditions and contract set out in Appendices A and B, respectively.* Much of the language included in the standard terms and conditions and contract reflects requirements of Montana law.

Offerors requesting additions or exceptions to the standard terms and conditions, contract terms, shall submit them to the procurement officer listed above by the date in Section 1.4.2. A request must be accompanied by an explanation why the exception is being sought and what specific effect it will have on the Offeror's ability to respond to the RFP or perform the contract. The State reserves the right to address nonmaterial requests for exceptions to the standard terms and conditions and contract language with the selected Offeror during contract negotiation.

The State shall identify any revisions to the standard terms and conditions and contract language in a written addendum issued for this RFP. The addendum will apply to all Offerors submitting a response to this RFP. The State will determine any changes to the standard terms and conditions and/or contract.

**1.5.2 Resulting Contract.** This RFP and any addenda, the Offeror's RFP response, including any amendments, a best and final offer (if any), and any clarification question responses shall be incorporated by reference in any resulting contract.

**1.5.3 Mandatory Requirement.** To be eligible for consideration, an offeror must meet all mandatory requirements as listed below and in Sections 3 and 5. The State will determine whether an offeror's proposal complies with the requirements. Proposals that fail to meet any mandatory requirements listed in this RFP will be deemed nonresponsive.

State funding available for this contract has a ceiling of \$30,000. If the Offeror's RFP response contains a project budget that exceeds \$30,000 in State funding, the response will be disqualified from further consideration.

**1.5.4 Understanding of Specifications and Requirements.** By submitting a response to this RFP, Offeror acknowledges it understands and will comply with the RFP specifications and requirements.

**1.5.5 Offeror's Signature.** Offeror's proposal must be signed in ink by an individual authorized to legally bind the Offeror. The Offeror's signature guarantees that the offer has been established without collusion. Offeror shall provide proof of authority of the person signing the RFP upon State's request.

**1.5.6 Offer in Effect for 120 Calendar Days.** Offeror agrees that it may not modify, withdraw, or cancel its proposal for a 120-day period following the RFP due date, or receipt of best and final offer, if required.

## **1.6 SUBMITTING A PROPOSAL**

**1.6.1 Organization of Proposal.** Offerors must organize their proposal into sections that follow the format of this RFP. Proposals must be bound, and include tabbed dividers separating each section. Proposal pages must be consecutively numbered.

The State encourages Offerors to use materials (e.g., paper, dividers, binders, brochures, etc.) that contain post-consumer recycled content. Offerors are encouraged to print/copy on both sides of each page.

**1.6.2 Failure to Comply with Instructions.** Offerors failing to comply with these instructions may be subject to point deductions. Further, the State may deem a proposal nonresponsive or disqualify it from further

consideration if it does not follow the response format, is difficult to read or understand, or is missing requested information.

**1.6.3 Multiple Proposals.** Offerors may, at their option, submit multiple proposals. Each proposal shall be evaluated separately.

**1.6.4 Copies Required and Deadline for Receipt of Proposals.** Offerors must submit **one original proposal, two hard copies, and one electronic copy** (in Microsoft Word or PDF format) to Montana Fish, Wildlife & Parks.

**EACH PROPOSAL MUST BE SEALED AND LABELED ON THE OUTSIDE OF THE PACKAGE** clearly indicating it is in response to RFP 130021. ***Proposals must be received at the reception desk of Montana Fish, Wildlife & Parks prior to 2:00 p.m., Mountain Time, September 7, 2012. Offeror is solely responsible for assuring delivery to the reception desk by the designated time.***

**1.6.5 Late Proposals.** ***Regardless of cause, the State shall not accept late proposals. Such proposals will automatically be disqualified from consideration.*** Offeror may request the State return the proposal at Offeror's expense or the State will dispose of the proposal if requested by the Offeror. (See Administrative Rules of Montana (ARM) 2.5.509.)

## **1.7 COSTS/OWNERSHIP OF MATERIALS**

**1.7.1 State Not Responsible for Preparation Costs.** Offeror is solely responsible for all costs it incurs prior to contract execution.

**1.7.2 Ownership of Timely Submitted Materials.** The State shall own all materials submitted in response to this RFP.

## **SECTION 2: RFP STANDARD INFORMATION**

### **2.1 AUTHORITY**

The RFP is issued under 18-4-304, Montana Code Annotated (MCA) and ARM 2.5.602. The RFP process is a procurement option allowing the award to be based on stated evaluation criteria. The RFP states the relative importance of all evaluation criteria. The State shall use only the evaluation criteria outlined in this RFP.

### **2.2 OFFEROR COMPETITION**

The State encourages free and open competition to obtain quality, cost-effective services and supplies. The State designs specifications, proposal requests, and conditions to accomplish this objective.

### **2.3 RECEIPT OF PROPOSALS AND PUBLIC INSPECTION**

**2.3.1 Public Information.** Subject to exceptions provided by Montana law, all information received in response to this RFP, including copyrighted material, is public information. Proposals will be made available for public viewing and copying shortly after the proposal due date and time. The exceptions to this requirement are: (1) bona fide trade secrets meeting the requirements of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4, MCA, that have been properly marked, separated, and documented; (2) matters involving individual safety as determined by the State; and (3) other constitutional protections. See 18-4-304, MCA. The State provides a copier for interested parties' use at \$0.35 per page. The interested party is responsible for the cost of copies and to provide personnel to do the copying.

**2.3.2 Procurement Officer Review of Proposals.** Upon opening the proposals in response to this RFP the procurement officer reviews the proposals for information that meets the exceptions in Section 2.3.1, providing the following conditions have been met:

- Confidential information (including any provided in electronic media) is clearly marked and separated from the rest of the proposal.
- The proposal does not contain confidential material in the cost or price section.
- An affidavit from the Offeror's legal counsel attesting to and explaining the validity of the trade secret claim as set out in Title 30, chapter 14, part 4, MCA, is attached to each proposal containing trade secrets. Counsel must use the State of Montana "Affidavit for Trade Secret Confidentiality" form in requesting the trade secret claim. This affidavit form is available on the OneStop Vendor Information website at: <http://svc.mt.gov/gsd/OneStop/GSDDocuments.aspx> or by calling (406) 444-2575.

Information separated out under this process will be available for review only by the procurement officer, the evaluator/evaluation committee members, and limited other designees. Offerors shall pay all of its legal costs and related fees and expenses associated with defending a claim for confidentiality should another party submit a "right to know" (open records) request.

### **2.4 CLASSIFICATION AND EVALUATION OF PROPOSALS**

**2.4.1 Initial Classification of Proposals as Responsive or Nonresponsive.** The State shall initially classify all proposals as either "responsive" or "nonresponsive" (ARM 2.5.602). The State may deem a proposal nonresponsive if: (1) any of the required information is not provided; (2) the submitted price is found to be excessive or inadequate as measured by the RFP criteria; or (3) the proposal does not meet RFP requirements and specifications. The State may find any proposal to be nonresponsive at any time during the procurement process. If the State deems a proposal nonresponsive, it will not be considered further.

**2.4.2 Determination of Responsibility.** The procurement officer will determine whether an Offeror has met the standards of responsibility consistent with ARM 2.5.407. An Offeror may be determined nonresponsible at any time during the procurement process if information surfaces that supports a nonresponsible determination. If an Offeror is found nonresponsible, the procurement officer will notify the Offeror by mail. The determination will be made a part of the procurement file.

**2.4.3 Evaluation of Proposals.** An evaluator/evaluation committee will evaluate all responsive proposals based on stated criteria and recommend award to the highest scoring Offeror. The evaluator/evaluation committee may initiate discussion, negotiation, or a best and final offer. In scoring against stated criteria, the evaluator/evaluation committee may consider such factors as accepted industry standards and a comparative evaluation of other proposals in terms of differing price and quality. These scores will be used to determine the most advantageous offering to the State. If an evaluation committee meets to deliberate and evaluate the proposals, the public may attend and observe the evaluation committee deliberations.

**2.4.4 Completeness of Proposals.** Selection and award will be based on the Offeror's proposal and other items outlined in this RFP. Proposals may not include references to information such as Internet websites, unless specifically requested. Information or materials presented by Offerors outside the formal response or subsequent discussion, negotiation, or best and final offer, if requested, will not be considered, will have no bearing on any award, and may result in the Offeror being disqualified from further consideration.

**2.4.5 Opportunity for Discussion/Negotiation and/or Oral Presentation/Product Demonstration.** After receipt of proposals and prior to the recommendation of award, the procurement officer may initiate discussions with one or more Offerors should clarification or negotiation be necessary. Offerors may also be required to make an oral presentation and/or product demonstration to clarify their RFP response or to further define their offer. In either case, Offerors should be prepared to send qualified personnel to Helena, Montana, to discuss technical and contractual aspects of their proposal. Oral presentations and product demonstrations, if requested, shall be at the Offeror's expense.

**2.4.6 Best and Final Offer.** Under Montana law, the procurement officer may request a best and final offer if additional information is required to make a final decision. The State reserves the right to request a best and final offer based on price/cost alone. Please note that the State rarely requests a best and final offer on cost alone.

**2.4.7 Evaluator/Evaluation Committee Recommendation for Contract Award.** The evaluator/evaluation committee will provide a written recommendation for contract award to the procurement officer that contains the scores, justification, and rationale for the decision. The procurement officer will review the recommendation to ensure its compliance with the RFP process and criteria before concurring with the evaluator's/evaluation committee's recommendation.

**2.4.8 Request for Documents Notice.** Upon concurrence with the evaluator's/evaluation committee's recommendation, the procurement officer will request from the highest scoring Offeror the required documents and information, such as insurance documents, contract performance security, an electronic copy of any requested material (e.g., proposal, response to clarification questions, and/or best and final offer), and any other necessary documents. Receipt of this request does not constitute a contract and **no work may begin until a contract signed by all parties is in place.** The procurement officer will notify all other Offerors of the State's selection.

**2.4.9 Contract Execution.** Upon receipt of all required materials, a contract (Appendix B) incorporating the Standard Terms and Conditions (Appendix A), as well as the highest scoring Offeror's proposal, will be provided to the highest scoring Offeror for signature. The highest scoring Offeror will be expected to accept and agree to all material requirements contained in Appendices A and B of this RFP. If the highest scoring Offeror does not accept all material requirements, the State may move to the next highest

scoring Offeror, or cancel the RFP. Work under the contract may begin when the contract is signed by all parties.

## **2.5 STATE'S RIGHTS RESERVED**

While the State has every intention to award a contract resulting from this RFP, issuance of the RFP in no way constitutes a commitment by the State to award and execute a contract. Upon a determination such actions would be in its best interest, the State, in its sole discretion, reserves the right to:

- Cancel or terminate this RFP (18-4-307, MCA);
- Reject any or all proposals received in response to this RFP (ARM 2.5.602);
- Waive any undesirable, inconsequential, or inconsistent provisions of this RFP that would not have significant impact on any proposal (ARM 2.5.505);
- Not award a contract, if it is in the State's best interest not to proceed with contract execution (ARM 2.5.602); or
- If awarded, terminate any contract if the State determines adequate state funds are not available (18-4-313, MCA).

## SECTION 3: SCOPE OF SERVICES

To enable the State to determine the capabilities of an Offeror to provide the services specified in the RFP, the Offeror shall respond to the following regarding its ability to meet the State's requirements.

**All subsections of Section 3 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.**

**NOTE: Each item must be thoroughly addressed. Offerors taking exception to any requirements listed in this section may be found nonresponsive or be subject to point deductions.**

### **Fish & Wildlife Recommendations for Energy Development in Montana – Phase I**

## **3.1 BACKGROUND, PROJECT OVERVIEW, SCOPE OF WORK, AND PRODUCTS**

The mission of Montana Fish, Wildlife & Parks (FWP) is to provide for the stewardship of the fish, wildlife, parks, and recreational resources of Montana while contributing to the quality of life for present and future generations. In fulfilling this mission, FWP's employees and citizen commission work in partnership with many others. We operate under a set of guiding principles, two of which are especially relevant to this project. We strive to (1) maintain the long-term viability of Montana's natural, cultural, and recreational resources; and (2) provide credible and objective information.

FWP wishes to actively support efforts by state and federal agencies, local governments and watershed groups, private developers, conservation organizations, and other stakeholders to integrate fish and wildlife information early, and more fully, into their respective land use planning processes. Since 2005, FWP has supported such integration by focusing on the compilation of the best available fish and wildlife information for Montana, and the development of tools to give interested persons and organizations ready access to that information. For example, FWP has prepared Montana's first State Wildlife Action Plan (the Comprehensive Fish and Wildlife Conservation Strategy, accessible at <http://fwp.mt.gov/fishAndWildlife/conservationInAction/>), and developed the Crucial Areas Planning System (CAPS, accessible at <http://fwp.mt.gov/fishAndWildlife/conservationInAction/crucialAreas.html>). FWP has also demonstrated CAPS to various stakeholders and solicited their suggestions for making it a more useful and user-friendly tool. FWP has prepared Fish and Wildlife Recommendations for Subdivision Development in Montana: A Working Document as primarily in-house guidance for FWP area biologists (accessible at <http://fwp.mt.gov/fishAndWildlife/livingWithWildlife/buildingWithWildlife/subdivisionRecommendations/>). FWP has also encouraged early engagement of our area biologists in the land use planning processes of both public and private sectors.

This project is made possible by a grant from the Western Governors Association (WGA). The WGA's Wildlife Corridors and Crucial Habitat Initiative (accessible at <http://www.westgov.org/initiatives/wildlife>) provides a region-wide context for this project.

In Phase I of this project, FWP plans to compile fish & wildlife recommendations for oil & gas and wind energy development in Montana. Future project phases will address additional types of energy development in the state.

The recommendations will serve primarily as in-house guidance for FWP's area biologists who are asked to review and comment on proposed energy leases and energy projects. FWP wishes to provide consistent, predictable, efficient, and effective input into the proposal review process. FWP will make its recommendations accessible to the general public, including other public agencies, private companies, and non-governmental organizations that may find the guidance helpful in their own development and/or conservation planning.

Contractor services are needed to help FWP accomplish its Phase I goal. Specifically, the Contractor will:

- Provide technical support to FWP's Energy Recommendations Technical Working Group (TWG), its Oil & Gas Technical Team (O&G), and its Wind Energy Technical Team (WE). The TWG, O&G, and WE will be composed of FWP biologists. The TWG will provide project oversight, while the O&G and WE will assemble preliminary recommendations and supporting scientific references for the TWG's consideration.
- Facilitate meetings of the TWG, O&G, and WE. Each will meet 2-5 times over the course of the project period. Contractor will schedule the meetings, prepare and distribute meeting agenda and meeting summaries, and guide meeting discussions, several of which may be held as teleconferences or videoconferences.
- Follow two parallel tracks (oil & gas, wind energy), as follows:
  - (1) Assemble preliminary recommendations suggested by the pertinent Technical Team, and organize the recommendations according to important habitats and species.
  - (2) Encourage the Technical Team to identify scientific references in support of the preliminary recommendations.
  - (3) Search the literature as needed to locate additional supporting science.
  - (4) Research and collect recommendations being used by state and federal resource management agencies in other Western states. Prepare a written summary of this information, and distribute it to the TWG and Technical Team.
  - (5) Prepare and distribute a preliminary draft document (including both recommendations and supporting science) to the Technical Team for review and revision.
  - (6) Make revisions, and prepare a draft document.
  - (7) Distribute this document to the Technical Team, the TWG, and other reviewers identified by the TWG.
  - (8) Solicit feedback from these groups, and compile comments/suggestions received during the document review period.
  - (9) Review the input with the Technical Team and TWG, and work with the TWG to arrive at final recommendations.
  - (10) Finalize the document.
- If the above work is completed for both oil & gas and wind energy prior to the end of the project period, a new Technical Team will be organized to tackle the compilation of fish and wildlife recommendations for a third type of energy development (e.g., transmission lines, pipelines, or coal). Contractor will provide similar technical support to this third effort, but without FWP expectations of receiving a completed document by the end of the project period.

Contractor will deliver all of the following products:

- (1) (Electronic copy) A suggested agenda for each TWG and Technical Team meeting.
- (2) (Electronic copy) A written summary of each meeting, including agreements reached and actions to be taken.
- (3) (Electronic copy) A written summary of oil & gas and wind energy recommendations being used in other Western States.
- (4) (Electronic copy and 2 hard copies) Two preliminary draft documents containing the energy recommendations and supporting science.
- (5) (Electronic copy) Compilation of review comments for each document.
- (6) (Via email and 2 hard copies) Two draft documents containing the energy recommendations and supporting science.
- (7) (Electronic copy) Compilation of review comments for each document.

- (8) (Electronic copy and 2 hard copies) Two final documents. Each document will follow the same format:
- Foreword, including purpose statement.
  - Acknowledgements.
  - Table of Contents.
  - Introduction.
  - Recommendations.
  - Appendices, including: (A) Contact Information for FWP Regions and Data; and (B) Rationale for the Recommendations, with Scientific References.
- (9) Any notes, resource information, drafts assembled in connection with a third type of energy development.

## **3.2 CONTRACTOR RESPONSIBILITIES**

Contractor duties have been described above. Contractor is expected to furnish its own equipment and cover its travel and operating costs related to the project.

## **3.3 FWP (“STATE”) RESPONSIBILITIES**

The State will be responsible for:

- Forming TWG, O&G, and WE. Prior to the beginning of the project period, the State will identify TWG, O&G, and WE members, and compile a contact list.
- Furnishing Contractor with information reflecting the recommendations that FWP biologists currently use in their comments on proposed energy leases and projects.
- Forming an Advisory Committee of agency partners and other interested parties for one or both types of energy development, if the TWG deems this useful for either or both types of energy development under consideration. The State will organize this group, compile a contact list, facilitate their involvement and input, and bring their suggestions forward to the TWG and pertinent Technical Team.
- Keeping the TWG, O&G, and WE informed of similar efforts to assemble energy recommendations at a larger, inter-agency scale.
- Printing and distribution of final documents.
- Providing Contractor with access to FWP meeting rooms and FWP’s videoconferencing technology, which is available at FWP Headquarters in Helena and each Regional Office. If any out of state videoconferencing is required, FWP will pick up the expense.
- Overall project coordination will be provided by the Strategic Planning Section of FWP.

## **3.4 CONTRACTOR/STATE RELATIONS INCLUDING CONTRACTOR PAYMENTS**

Contractor is expected to work with a good deal of independence, yet confer at least every other week with the State and more frequently as questions arise.

**3.4.1 Quarterly reports.** Contractor will submit to the State a written statement of work accomplished on a quarterly basis (January 31, 2013; April 30, 2013; July 31, 2013; October 31, 2013). The State will provide payment to the Contractor as follows:

**3.4.2 Milestone Payments.** Payments to the Contractor will be based on completion and acceptance of each milestone defined below.

**3.4.3 Payment Holdbacks.** 5% will be withheld from each milestone payment. The total amount withheld will be paid to the contractor at the completion and acceptance of the final milestone.

<b>Milestone/Deliverable</b>	<b>Hold Back</b>	<b>Payment % of Total</b>
Milestone 1:Preliminary Oil & Gas, Wind Energy Recommendations	5% of approved invoice	33%
Milestone 2: Draft Oil & Gas, Wind Energy Documents	5% of approved invoice	33%
Milestone 3: Final Oil & Gas, Wind Energy Documents.	5% of approved invoice	34%
Final Acceptance		100%

### **3.5 PROJECT TIMELINE AND DEADLINES FOR DELIVERABLES**

Project will begin upon contract execution (November 1, 2012) and end on October 31, 2013.

Target dates for the main products to be delivered are:

- (1) April 2013, Preliminary Oil & Gas Recommendations and Supporting Science
- (2) April 2013, Preliminary Wind Energy Recommendations and Supporting Science
- (3) July 2013, Draft Oil & Gas Document
- (4) July 2013, Draft Wind Energy Document
- (5) October 2013, Final Oil & Gas Document
- (6) October 2013, Final Wind Energy Document
- (7) October 2013, Preliminary Material (if any) associated with third energy development type

## SECTION 4: OFFEROR QUALIFICATIONS

All subsections of Section 4 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

### **4.1 STATE'S RIGHT TO INVESTIGATE AND REJECT**

The State may make such investigations as deemed necessary to determine the Offeror's ability to perform the services specified. The State reserves the right to reject a proposal if the information submitted by, or investigation of, the Offeror fails to satisfy the State that the Offeror is properly qualified to perform the obligations of the contract. *This includes the State's ability to reject the proposal based on negative references.*

### **4.2 OFFEROR QUALIFICATIONS**

In order for the State to determine the capabilities of an Offeror to perform the services specified in this RFP, the Offeror must respond to the following requests for information regarding its ability to meet the State's requirements.

**Responses that do not meet the minimum requirements will not be considered.**

#### **Minimum Qualifications**

##### **4.2.1 References.**

- Offeror shall provide at least three references that are using services of the type proposed in this RFP.
- The references may include public or private entities for whom the Offeror, preferably within the last five years, has successfully completed a process similar to that described under Section 3, Scope of Services.
- At a minimum, the Offeror shall provide the entity's name, location where the services were provided, contact person(s), client's telephone number, e-mail address, and a complete description of the services provided, and dates of the services were provided. These references may be contacted to verify Offeror's ability to perform the contract.
- The State reserves the right to use any information or additional references deemed necessary to establish the ability of the Offeror to perform the contract. Negative references may be grounds for proposal disqualification.

**4.2.2 Company Profile and Experience.** Offeror shall document its qualifications and experience to provide the services specified in this RFP, including, at a minimum:

- A detailed description of any similar past projects, including the service type, dates the services were provided, and client contact information. Offeror must clearly indicate its role in each project.
- At least five (5) years experience providing services similar to those described within this RFP.
- At least one (1) example (including client contact information) of the Offeror's work within the last five years, demonstrating all of the following: (1) grasp of natural resources and land use planning principles; (2) experience in resource protection in relation to energy development; (3) technical writing and research ability; and (4) organizational skills.
- A general description of the firm including its primary source of business, organizational structure and size, and number of employees.
- A resume or summary of qualifications, work experience, education, and skills which emphasizes the pertinent experience of all key personnel who will be involved in the project. Identify what role each person would play in performing the work identified in this RFP.

4.2.3 Ability to Perform Services. Offeror must provide a description of the methods and work plan, including timeline, to be used that will further demonstrate to the State the Offeror's understanding of the tasks outlined above in Section 3. Scope of Services, and the Offeror's ability to perform the work.

4.2.4 Oral Interview. Offerors must be prepared to have the key personnel assigned to this project complete an oral interview conducted either in Helena, Montana or via teleconference. The State reserves the right to interview (1) only the two or three preliminary highest scoring Offerors; (2) all Offerors within 20% of the preliminary highest scoring Offeror; or (3) all Offerors who are deemed to have a preliminary passing score prior to the interview process, at the State's discretion.

**Preferred Qualification**

Above and beyond the minimum qualifications outlined above, the State will give preference to Offerors who demonstrate a clear understanding of energy development and associated fish and wildlife issues.

## **SECTION 5: COST PROPOSAL**

All subsections of Section 5 not listed in the "Instructions to Offerors" on page 3 require a response. Restate the subsection number and the text immediately prior to your written response.

### **5.1 ITEMIZED BUDGET**

Provide an itemized project budget with narrative justification.

### **5.2 EXPECTED BUDGET RANGE**

The State estimates the cost of consulting services for this project at \$30,000.

### **5.3 BUDGET CEILING**

Funds available from the State for this contract have a ceiling of \$30,000. Project budgets exceeding this amount of State funding will disqualify the Offeror's response from further consideration.

### **5.4 INVOICE INTERVALS**

State will accept project invoices according to the milestones listed in Section 3.4 above.

## SECTION 6: EVALUATION PROCESS

### 6.1 BASIS OF EVALUATION

The evaluator/evaluation committee will review and evaluate the offers according to the following criteria based on a total number of 1000 points.

#### SCORING GUIDE

In awarding points to the evaluation criteria, the evaluator/evaluation committee will consider the following guidelines:

**Superior Response (95-100%):** A superior response is an exceptional reply that completely and comprehensively meets all of the requirements of the RFP. In addition, the response may cover areas not originally addressed within the RFP and/or include additional information and recommendations that would prove both valuable and beneficial to the agency.

**Good Response (75-94%):** A good response clearly meets all the requirements of the RFP and demonstrates in an unambiguous and concise manner a thorough knowledge and understanding of the project, with no deficiencies noted.

**Fair Response (60-74%):** A fair response minimally meets most requirements set forth in the RFP. The Offeror demonstrates some ability to comply with guidelines and requirements of the project, but knowledge of the subject matter is limited.

**Failed Response (59% or less):** A failed response does not meet the requirements set forth in the RFP. The Offeror has not demonstrated sufficient knowledge of the subject matter.

### 6.2 EVALUATION CRITERIA

Category – Minimum Qualifications		Section of RFP	Point Value
<b>References</b>		References Provided = Pass References Not Provided = Fail	
1.	At least 3 References, with complete contact information provided	4.2.1	
<b>Company Profile and Experience</b>		<b>30% of points for a possible 300 points</b>	
2.	Relevant Past Projects	4.2.2	60
3.	At Least 5 Years of Relevant Experience	4.2.2	60
4.	At Least One Example of Work Demonstrating Particular Knowledge and Skills	4.2.2	60
5.	Company Description	4.2.2	60
6.	Resumes or Personnel Qualifications, and Identification of Personnel Roles in This Project	4.2.2	60
<b>Ability to Perform Services</b>		<b>20% of points for a possible 200 points</b>	
7.	Methods	4.2.3	100
8.	Work Plan, including Timeline	4.2.3	100
Category – Preferred Qualification		Section of RFP	Point Value
<b>Understanding of Energy Development and Fish/Wildlife Issues</b>		<b>20% of points for a possible 200 points</b>	
9.	Clear Understanding of Energy Development and Associated Fish/Wildlife Issues	Section 4	200
Category -- Cost Proposal		Section of RFP	Point Value
<b>Cost Proposal</b>		<b>20% of points for a possible 200 points</b>	
10.	Cost Proposal, including itemized budget and budget narrative	Section 5	200
<b>Oral Interview</b>		<b>10% of points for a possible 100 points</b>	
11.	Oral Interview	4.2.4	100
<b>TOTAL POSSIBLE POINTS</b>			<b>1000</b>

## APPENDIX A: STANDARD TERMS AND CONDITIONS

### Standard Terms and Conditions

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.**

**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

**AUTHORITY:** The attached bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**COMPLIANCE WITH LAWS:** The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of Montana Fish, Wildlife & Parks. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

**DEBARMENT:** The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

**DISABILITY ACCOMMODATIONS:** The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by Montana Fish, Wildlife & Parks prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

**FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.

**HOLD HARMLESS/INDEMNIFICATION:** The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

**RECIPROCAL PREFERENCE:** The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/ProcurementServices/preferences.mcp.x>.

**REDUCTION OF FUNDING:** The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

**REFERENCE TO CONTRACT:** The contract or purchase order number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Section 18-5-603, MCA.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

**WARRANTIES:** The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and/or use desired. Exceptions will be rejected.

## APPENDIX B: CONTRACT

### Recommendations for Energy Development in Montana (INSERT CONTRACT NUMBER)

#### 1. PARTIES

THIS CONTRACT is entered into by and between the State of Montana (insert agency name), (hereinafter referred to as “the State”), whose address and phone number are (insert address), (insert phone number) and (insert name of contractor), (hereinafter referred to as the “Contractor”), whose address and phone number are (insert address) and (insert phone number).

#### THE PARTIES AGREE AS FOLLOWS:

#### 2. EFFECTIVE DATE, DURATION, AND RENEWAL

**2.1 Contract Term.** This contract shall take effect on (insert date), 20(    ), (or upon contract execution) and terminate on (insert date), 20(    ), unless terminated earlier in accordance with the terms of this contract. (Section 18-4-313, MCA)

**2.2 Contract Renewal.** This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of three years.

#### 3. COST/PRICE ADJUSTMENTS

**Price Adjustments Negotiated Based on Changes in Contractor's Costs.** Price adjustments may be permitted at the time of contract renewal through a process of negotiation with the Contractor and the State. Any price increases must be based on demonstrated industry wide or regional increases in the Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

#### 4. SERVICES AND/OR SUPPLIES

Contractor agrees to provide to the State the following:

- Provide technical support to FWP’s Energy Recommendations Technical Working Group (TWG), its Oil & Gas Technical Team (O&G), and its Wind Energy Technical Team (WE). The TWG, O&G, and WE will be composed of FWP biologists. The TWG will provide project oversight, while the O&G and WE will assemble preliminary recommendations and supporting scientific references for the TWG’s consideration.
- Facilitate meetings of the TWG, O&G, and WE. Each will meet 2-5 times over the course of the project period. Contractor will schedule the meetings, prepare and distribute meeting agenda and meeting summaries, and guide meeting discussions, several of which may be held as teleconferences or videoconferences.
- Follow two parallel tracks (oil & gas, wind energy), as follows:
  - (1) Assemble preliminary recommendations suggested by the pertinent Technical Team, and organize the recommendations according to important habitats and species.
  - (2) Encourage the Technical Team to identify scientific references in support of the preliminary recommendations.

- (3) Search the literature as needed to locate additional supporting science.
  - (4) Research and collect recommendations being used by state and federal resource management agencies in other Western states. Prepare a written summary of this information, and distribute it to the TWG and Technical Team.
  - (5) Prepare and distribute a preliminary draft document (including both recommendations and supporting science) to the Technical Team for review and revision.
  - (6) Make revisions, and prepare a draft document.
  - (7) Distribute this document to the Technical Team, the TWG, and other reviewers identified by the TWG.
  - (8) Solicit feedback from these groups, and compile comments/suggestions received during the document review period.
  - (9) Review the input with the Technical Team and TWG, and work with the TWG to arrive at final recommendations.
  - (10) Finalize the document.
- If the above work is completed for both oil & gas and wind energy prior to the end of the project period, a new Technical Team will be organized to tackle the compilation of fish and wildlife recommendations for a third type of energy development (e.g., transmission lines, pipelines, or coal). Contractor will provide similar technical support to this third effort, but without FWP expectations of receiving a completed document by the end of the project period.

**Contractor will deliver all of the following products:**

- (1) (Electronic copy) A suggested agenda for each TWG and Technical Team meeting.
- (2) (Electronic copy) A written summary of each meeting, including agreements reached and actions to be taken.
- (3) (Electronic copy) A written summary of oil & gas and wind energy recommendations being used in other Western States.
- (4) (Electronic copy and 2 hard copies) Two preliminary draft documents containing the energy recommendations and supporting science.
- (5) (Electronic copy) Compilation of review comments for each document.
- (6) (Via email and 2 hard copies) Two draft documents containing the energy recommendations and supporting science.
- (7) (Electronic copy) Compilation of review comments for each document.
- (8) (Electronic copy and 2 hard copies) Two final documents. Each document will follow the same format:
  - Foreword, including purpose statement.
  - Acknowledgements.
  - Table of Contents.
  - Introduction.
  - Recommendations.
  - Appendices, including: (A) Contact Information for FWP Regions and Data; and (B) Rationale for the Recommendations, with Scientific References.
- (9) Any notes, resource information, drafts assembled in connection with a third type of energy development.

Contractor duties have been described above. Contractor is expected to furnish its own equipment and cover its travel and operating costs related to the project.

**FWP ("STATE") RESPONSIBILITIES**

The State will be responsible for:

- Forming TWG, O&G, and WE. Prior to the beginning of the project period, the State will identify TWG, O&G, and WE members, and compile a contact list.

- Furnishing Contractor with information reflecting the recommendations that FWP biologists currently use in their comments on proposed energy leases and projects.
- Forming an Advisory Committee of agency partners and other interested parties for one or both types of energy development, if the TWG deems this useful for either or both types of energy development under consideration. The State will organize this group, compile a contact list, facilitate their involvement and input, and bring their suggestions forward to the TWG and pertinent Technical Team.
- Keeping the TWG, O&G, and WE informed of similar efforts to assemble energy recommendations at a larger, inter-agency scale.
- Printing and distribution of final documents.
- Providing Contractor with access to FWP meeting rooms and FWP's videoconferencing technology, which is available at FWP Headquarters in Helena and each Regional Office. If any out of state videoconferencing is required, FWP will pick up that expense.
- Overall project coordination will be provided by the Strategic Planning Section of FWP.

Contractor is expected to work with a good deal of independence, yet confer at least every other week with the State and more frequently as questions arise.

## **PROJECT TIMELINE AND DEADLINES FOR DELIVERABLES**

Project will begin upon contract execution (November 1, 2012) and end on October 31, 2013.

Target dates for the main products to be delivered are:

- (1) April 2013, Preliminary Oil & Gas Recommendations and Supporting Science
- (2) April 2013, Preliminary Wind Energy Recommendations and Supporting Science
- (3) July 2013, Draft Oil & Gas Document
- (4) July 2013, Draft Wind Energy Document
- (5) October 2013, Final Oil & Gas Document
- (6) October 2013, Final Wind Energy Document
- (7) October 2013, Preliminary Material (if any) associated with third energy development type

## **5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration for the Recommendations for Energy Development in Montana to be provided, the State shall pay according to the following schedule: Contractor will submit to the State a written statement of work accomplished on a quarterly basis (January 31, 2013; April 30, 2013; July 31, 2013; October 31, 2013. payment, net 30 days, after acceptance of deliverables by FWP and properly submitted invoice.

**5.2 Withholding of Payment.** The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

## **6. ACCESS AND RETENTION OF RECORDS**

**6.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor or their authorized agent's access to any records necessary to determine contract compliance. (Section 18-1-118, MCA)

**6.2 Retention Period.** The Contractor agrees to create and retain records supporting the **Recommendations for Energy Development in Montana** for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation, or exception relating to this contract taken by the State of Montana or a third party.

## **7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

The Contractor shall not assign, transfer, or subcontract any portion of this contract without the express written consent of the State. (Section 18-4-141, MCA) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

## **8. HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

## **9. REQUIRED INSURANCE**

**9.1 General Requirements.** The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**9.2 Primary Insurance.** The Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**9.3 Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of **\$100,000** per occurrence and **\$300,000** aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products, and completed operations; premises owned, leased, occupied, or used.

**9.4 Specific Requirements for Automobile Liability.** The Contractor shall purchase and maintain coverage with split limits of \$500,000 per person (personal injury), \$1,000,000 per accident occurrence (personal injury), and \$100,000 per accident occurrence (property damage), OR combined single limits of \$1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

**9.5 Specific Requirements for Professional Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of **\$100,000** per occurrence and **\$300,000** aggregate per year to cover such claims as may be caused by any act, omission, negligence of the

Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

**9.6 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**9.7 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by Montana Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to Montana Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701, upon expiration.

## **11. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

## **12. INTELLECTUAL PROPERTY**

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use and authorize others to use, copyrightable property created under this contract.

## **13. PATENT AND COPYRIGHT PROTECTION**

**13.1 Third-Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages, and attorney's fees

that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**13.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes noninfringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

#### **14. CONTRACT PERFORMANCE ASSURANCE**

**14.1 Milestone Payments.** Payments to the Contractor will be based on completion and acceptance of each milestone defined below.

**14.2 Payment Holdbacks.** 5% will be withheld from each milestone payment. The total amount withheld will be paid to the contractor at the completion and acceptance of the final milestone.

<b>Milestone/Deliverable</b>	<b>Hold Back</b>	<b>Payment % of Total</b>
Milestone 1:Preliminary Oil & Gas, Wind Energy Recommendations	5% of approved invoice	33%
Milestone 2: Draft Oil & Gas, Wind Energy Documents	5% of approved invoice	33%
Milestone 3: Final Oil & Gas, Wind Energy Documents.	5% of approved invoice	34%
Final Acceptance		100%

#### **15. CONTRACT TERMINATION**

The following three termination provisions are presented as options for Section 16.1. In deciding which provision to use, consideration should be given to the circumstances of each individual contract.

**15.1 Termination for Cause.** The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract.

**15.2 Reduction of Funding.** The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

#### **16. LIAISON AND SERVICE OF NOTICES**

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

\_\_\_\_\_ will be the liaison for the State.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:  
E-mail:

\_\_\_\_\_ will be the liaison for the Contractor.

(Address):  
(City, State, ZIP):  
Telephone:  
Cell Phone:  
Fax:  
E-mail:

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

## **17. MEETINGS**

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

## **18. CONTRACTOR PERFORMANCE ASSESSMENTS**

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

## **19. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

## **20. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis

and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

## 21. SCOPE, AMENDMENT, AND INTERPRETATION

**21.1 Contract.** This contract consists of (insert number) numbered pages, any Attachments as required, RFP # 130021, as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

**21.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

## 23. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

(INSERT AGENCY NAME)

(Insert Address)

Insert City, State, Zip)

(INSERT CONTRACTOR'S NAME)

(Insert Address)

(Insert City, State, Zip)

FEDERAL ID #

BY: \_\_\_\_\_  
(Name/Title)

BY: \_\_\_\_\_  
(Name/Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to Legal Content:

\_\_\_\_\_  
Legal Counsel (Date)

Approved as to Form: